

## Defendants.

**Transferred from the Western  
District of Virginia**

Plaintiff's decedent, Orvin Kiser, Sr., was diagnosed with an asbestos-related non-malignant disease in 1988 (non-malignant pleural thickening and asbestosis) and was later diagnosed with mesothelioma on November 9, 2009. Mesothelioma is a separate and distinct injury from non-malignant pleural thickening and asbestosis. The latter cannot be said to "cause" the former and, indeed, the two have separate and distinct disease processes. Additionally, while pleural thickening and asbestosis are dose-related illnesses, mesothelioma is not dependent upon the quantum of exposure to asbestos.

**(4) Names of each of the parties involved**

Phyllis H. Kiser, Executrix of the Estate of Orvin H. Kiser, Sr., Deceased  
A.W. Chesterton Company  
Crane Packing Company  
Crown Cork & Seal Company, Inc.  
Exxon Mobil Corporation  
Foster Wheeler Corporation  
General Electric Company  
General Refractories Company  
Georgia-Pacific Corporation  
Goulds Pumps, Inc.  
Harsco Industrial Patterson-Kelley  
Ingersoll-Rand Company  
John Crane, Inc.  
Metropolitan Life Insurance Company  
Rapid American Corporation  
Riley Power, Inc.  
SEPCO, Inc.  
Trane U.S., Inc.  
Uniroyal, Inc.  
CBS Corporation  
Warren Pumps, LLC  
Zenith Pumps

**(5) Names, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and email address (if any) of counsel for each of the parties involved**

R. Thomas Radcliffe, Jr., Esq. (VSB No. 34711) Kay Millicent Brown, Esq. (VSB No. 30764) Kira A. Ligato, Esq. (VSB No. 51055) DeHay & Elliston, LLP 36 S. Charles Street, Suite 1300 Baltimore, MD 21201 Phone: 410-783-7225 Fax: 410-783-7221 <b>Goulds Pumps, Inc.</b> <a href="mailto:rtr@dehay.com">rtr@dehay.com</a> <a href="mailto:kbrown@dehay.com">kbrown@dehay.com</a> <a href="mailto:kligato@dehay.com">kligato@dehay.com</a>	Jeffrey Poretz, Esq. (VSB No. 27399) Carl R. Schwartz, Esq. (VSB No. 38529) Miles & Stockbridge, PC 1751 Pinnacle Drive, Suite 500 McLean, VA 22102-3833 Phone: 703-903-9000 Fax: 703-610-8686 <b>Georgia Pacific Corporation</b> <a href="mailto:jporetz@milestockbridge.com">jporetz@milestockbridge.com</a> <a href="mailto:cschwartz@milesstockbridge.com">cschwartz@milesstockbridge.com</a>
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<p>Richard. W. Boone, Sr., Esq.(DC Bar No. 50906)  Boone &amp; Associates, PC  10195 Main Street, Suite D  Fairfax, VA 22031-3415  Phone: 703-934-2780  Fax: 703-934-2785  <b>Crown Cork &amp; Seal Co., Inc.</b>  <a href="mailto:rwboone@aol.com">rwboone@aol.com</a></p>	<p>Albert H. Poole, Esq. (VSB No. 19709)  Huff, Poole &amp; Mahoney, P.C.  4705 Columbus Street  Virginia Beach, VA 23462  Phone: 757-499-1841  Fax: 757-552-6016  <b>Trane US Inc.</b>  <a href="mailto:apoole@hpmlaw.com">apoole@hpmlaw.com</a></p>
<p>Anthony B. Taddeo, Jr., Esq. (VSB No. 70677)  Matthew D. Joss, Esq. (VSB No. 48434)  David M. Sturm, Esq. (VSB No. 44580)  Taddeo &amp; Sturm, PLC  3 West Cary Street  Richmond, VA 23220  Phone: 804-344-8540  Fax: 804-344-8541  <b>Foster Wheeler Corporation</b>  <b>General Electric Company</b>  <a href="mailto:taddeo@taddeosturm.com">taddeo@taddeosturm.com</a>  <a href="mailto:joss@taddeosturm.com">joss@taddeosturm.com</a>  <a href="mailto:sturm@taddeosturm.com">sturm@taddeosturm.com</a></p>	<p>Patricia Bugg Turner, Esq. (VSB No. 72775)  M. F. Connell Mullins, Jr., Esq. (VSB No. 47213)  Henry N. Ware, Jr., Esq. (VSB No. 22832)  Spotts Fain, PC  411 East Franklin Street, Suite 600  P.O. Box 1555  Richmond, VA 23218-1555  Phone: 804-697-2000  Fax: 804-697-2100  <b>Ingersoll-Rand Company</b>  <b>CBS Corporation</b>  <a href="mailto:pturner@spottsfain.com">pturner@spottsfain.com</a>  <a href="mailto:cmullins@spottsfain.com">cmullins@spottsfain.com</a>  <a href="mailto:hnware@spottsfain.com">hnware@spottsfain.com</a></p>
<p>Martin A. Conn, Esq. (VSB No. 39113)  Eric G. Reeves, Esq. (VSB No. 38149)  Brian J. Schneider, Esq. (VSB No. 45841)  C. Stinson Munday, Esq. (VSB No. 71214)  Moran Reeves &amp; Conn PC  4110 E. Parham Road  Richmond, VA 23228  Phone: 804-421-6250  Fax: 804-421-6251  <b>A.W. Chesterton Company</b>  <b>Crane Packing Company</b>  <b>John Crane, Inc.</b>  <a href="mailto:mconn@mrcpclaw.com">mconn@mrcpclaw.com</a>  <a href="mailto:ereeves@mrcpclaw.com">ereeves@mrcpclaw.com</a>  <a href="mailto:bschneider@mrcpclaw.com">bschneider@mrcpclaw.com</a>  <a href="mailto:smundy@mrcpclaw.com">smundy@mrcpclaw.com</a></p>	<p>Bruce T. Bishop, Esq. (VSB No. 16029)  Stephen R. Jackson, Esq. (VSB No. 27471)  Joyce Jackson Wood, Esq. (VSB No. 19969)  Willcox &amp; Savage, PC  440 Monticello Avenue, Suite 2200  Norfolk, VA 23510-2243  Phone: 757-628-5500  Fax: 757-628-5566  <b>Exxon Mobil Corporation</b>  <b>Rapid-American Corporation</b>  <b>Riley Power, Inc.</b>  <b>SEPCO, Inc.</b>  <a href="mailto:bbishop@wilsav.com">bbishop@wilsav.com</a>  <a href="mailto:sjackson@wilsav.com">sjackson@wilsav.com</a>  <a href="mailto:jwood@wilsav.com">jwood@wilsav.com</a></p>

<p>Geoffrey S. Gavett, Esq. (Federal Bar No. 01997)  Katherine S. Duyer, Esq. (Federal Bar No. 03045)  Gavett &amp; Datt, PC  15850 Crabbs Branch Way, Suite 180  Rockville, MD 20855-2622  Phone: 301-948-1177  Fax: 301-948-4334  <b>Harsco Industrial Patterson-Kelley</b>  <a href="mailto:ggavett@gavettdatt.com">ggavett@gavettdatt.com</a>  <a href="mailto:kduyer@gavettdatt.com">kduyer@gavettdatt.com</a></p>	<p>John P. Fishwick, Jr., Esq. (VSB No. 23285)  LichtensteinFishwick, PLC  Liberty Trust Building, Suite 400  101 South Jefferson Street  Roanoke, VA 24011  Phone: 540-343-9711  Fax: 540-343-9713  <b>Metropolitan Life Insurance Company</b>  <a href="mailto:jpf@vatrials.com">jpf@vatrials.com</a></p>
<p>Timothy S. Brunick, Esq. (VSB No. 35783)  Clarke, Dolph, Rapaport, Hull, Brunick &amp; Garriott, PLC  6160 Kempsville Circle, Suite 101A  Norfolk, VA 23502  Phone: 757-466-0464  Fax: 757-466-0834  <b>Warren Pumps, LLC</b>  <a href="mailto:tbrunick@clarkedolph.com">tbrunick@clarkedolph.com</a></p>	<p>Joshua D. Scheets, Esq.  (Attorney ID No. 203015)  Marshall, Dennehey, Warner, Coleman &amp; Goggin  1845 Walnut Street, 13<sup>th</sup> Floor  Philadelphia, PA 19103  Phone: 215-575-2600  Fax: 215-575-0856  <b>Zenith Pumps</b>  <a href="mailto:jdscheets@mdwgc.com">jdscheets@mdwgc.com</a></p>
<p>Nathan D. Finch, Esquire (VSB No. 34290)  Motley Rice, LLC  1000 Potomac Street, NW, Suite 150  Washington, DC 20007  Phone : 202-232-5507  Fax: 202-232-5531 Fax  <b>Plaintiff</b>  <a href="mailto:nfinch@motleyrice.com">nfinch@motleyrice.com</a></p>	<p>Gary W. Kendall, Esq. (VSB No. 15651)  J. Gregory Webb, Esq. (VSB No. 38157)  E. Kyle McNew, Esq. (VSB No. 73210)  Michie Hamlett Lowry Rasmussen &amp; Tweel PLLC  500 Court Square, Suite 300  P.O. Box 298  Charlottesville, VA 22902-0298  Phone: 434-951-7200  Fax: 434-951-7218  <b>Plaintiff</b>  <a href="mailto:gkendall@michiehamlett.com">gkendall@michiehamlett.com</a>  <a href="mailto:gwebb@michiehamlett.com">gwebb@michiehamlett.com</a>  <a href="mailto:kmcnew@michiehamlett.com">kmcnew@michiehamlett.com</a></p>

**(6) Brief statement explaining how the certified question of law is determinative of the proceeding in the certifying court**

If the statute of limitations on the plaintiff's decedent's claim for mesothelioma began to run in November of 2009 when he was diagnosed with mesothelioma, his claim was timely and the cause continues. However, if the statute of limitations began to run on the plaintiff's decedent's claim for mesothelioma when he was first diagnosed with an asbestos-related non-malignant disease or condition in 1988, the case is barred by Virginia's two year statute of limitations.

**(7) Brief statement of relevant decisions, if any, of the Supreme Court of Virginia and the Court of Appeals of Virginia and the reasons why such decisions are not controlling**

Locke v. Johns Manville Corp., 275 S.E.2d 900 (Va. 1981). This case is relevant but not controlling. First, it did not involve a plaintiff with a second or subsequent asbestos-related disease. Second, it was decided before the Virginia General Assembly amended the statute of limitations applicable to asbestos personal injury claims in 1985. See Virginia Code Va. Code Ann. § 8.01-249(4) (“The cause of action in the actions herein listed shall be deemed to accrue as follows: . . . 4. In actions for injury to the person resulting from exposure to asbestos or products containing asbestos, when a diagnosis of asbestosis, interstitial fibrosis, mesothelioma, or other disabling asbestos-related injury or disease is first communicated to the person or his agent by a physician.”).

The Clerk shall take all steps necessary to transmit this Order to the Supreme Court of Virginia in compliance with Rule 5:40 of the Rules of that Court.

AND IT IS SO ORDERED.

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**Eduardo C. Robreno**  
**United States District Judge**

Entered this \_\_\_\_ day of \_\_\_\_\_, 2011  
Philadelphia, Pennsylvania